

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-111 of 2025

Applicant: Ropshi s/o Natho Kolhi
Through Mr. Hassan Mal advocate.

Respondents: 1. S.S.P, District Mirpurkhas.
2. SHO PS Taluka.
3. Moso Mehar s/o Bhekho.
4. Nabi Bux s/o Emamdin.
5. Jabar s/o Moso Mehar.
6. Ghaffar s/o Moso Mehar.
7. Munchi Bhemon s/o Dharshi.
8. Kamdar Hamje s/o Nagjee
9. The State.
Official respondents through Mr. Ghulam Abbas Dalwani, Deputy P.G and private respondents through Mr. Rashid Ali Shah advocate.

Date of hearing: 09.07.2025.

Date of Order: 09.07.2025.

ORDER

Jan Ali Junejo, J. – Through the instant Criminal Miscellaneous Application filed under Section 561-A, Cr.P.C, the applicant has challenged the Order dated 16.05.2025 (hereinafter referred to as the *“Impugned Order”*) passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas, whereby the application under Sections 22-A & 22-B, Cr.P.C filed by the applicant was dismissed.

2. Succinctly, the case of the applicant is that he along with his family members worked as farmers on the agricultural lands of Respondent No. 3, namely Moso Mehar. It is alleged that an amount of Rs. 14,00,000/- along with 150 maunds of wheat was due to the applicant from the proceeds of their agricultural produce. When the applicant demanded his due share, the private respondents allegedly subjected him and his family to violence on 07-05-2025 and 11-05-2025, forcibly entered into his house, took away their goods and chaff, and threatened them with dire consequences. It is alleged that despite approaching the Police Station Taluka and the Senior

Superintendent of Police Mirpurkhas, no FIR was registered against the private respondents due to their alleged influence.

3. The learned Additional Sessions Judge-I, Mirpurkhas, after hearing of both parties, dismissed the application on the ground that the dispute between the parties was civil in nature relating to tenancy rights and division of crop proceeds, and no cognizable offence was made out for registration of FIR.

4. Learned counsel for the applicant reiterated the grounds mentioned in the application, emphasizing that the allegations made by the applicant clearly disclose cognizable offenses, necessitating the registration of an FIR. He argued that the learned Additional Sessions Judge-I erred in concluding that no cognizable offense was made out and that the dispute was purely civil in nature, pertaining to crop shares. He further contended that the police, under the influence of the private respondents, refused to register the FIR, leaving the applicant with no recourse but to approach the courts. Lastly, he prayed for the impugned order to be set aside.

5. Conversely, learned counsel for the private respondents supported the impugned order, arguing that the dispute between the parties is primarily a tenancy matter concerning the division of crop shares and savings, which falls within the purview of a Tenancy Tribunal, not criminal courts. He contended that the allegations of assault and threats were fabricated to transform a civil dispute into a criminal one, and that the learned Additional Sessions Judge-I rightly dismissed the application, noting the absence of a cognizable offense. Lastly the learned counsel prayed for dismissal of the present Criminal Misc. Application.

6. The learned Deputy Prosecutor General for the State submitted that the police had conducted an inquiry and submitted a report to the learned Additional Sessions Judge-I, which indicated the dispute to be of a civil nature, related to crop sharing.

7. This Court has carefully considered the arguments advanced by the learned counsel for the parties and has thoroughly perused the record, including the application under Section 561-A Cr.P.C. and the impugned order of the learned Additional Sessions Judge-I, Mirpurkhas. The core of the applicant's grievance revolves around two main aspects: firstly, the recovery of their alleged savings and wheat from Moso Mehar, and secondly, the alleged acts of violence, threats, and harassment by the private respondents when the applicant demanded these dues. It is evident from the record, and specifically from the impugned order, that the learned Additional Sessions Judge-I found an *"admitted position that there is dispute between the parties over the payment of shares of the savings of the crop. The alleged chaff is also produce of the joint crop of the parties"*. This finding clearly reflects that the primary dispute is of a civil-agricultural nature, arising out of a landlord-tenant relationship concerning the division of agricultural produce and earnings. Such matters fall squarely within the jurisdiction of the Tenancy Tribunal, which is the appropriate forum to adjudicate upon disputes involving agricultural tenancies and crop-sharing arrangements, as envisaged under the Sindh Tenancy Act, 1950. While the applicant has also leveled serious allegations of criminal acts, including assault, threats, and house trespass, it is crucial for a court exercising powers under Section 22-A & B or Section 561-A Cr.P.C. to ascertain whether the facts, on their face, primarily constitute a cognizable offense or are merely an attempt to criminalize a civil or commercial dispute. The learned Additional Sessions Judge-I, in his reasoned order, concluded that the applicant *"failed to bring a*

case for registration of FIR” and pertinently added that *“the applicant is at liberty to avail alternate remedy”*. This suggests that the learned Judge was of the view that the matter was not purely criminal but had elements that could be more appropriately addressed by another forum. This Court notes that the power under Section 561-A Cr.P.C. is extraordinary and is to be exercised sparingly, only when there is no other adequate remedy available or to prevent abuse of the process of any court or otherwise to secure the ends of justice. In the present case, the primary dispute appears to be commercial, revolving around agricultural produce and savings. While criminal allegations have been made, they appear to stem from this underlying commercial dispute. The learned Additional Sessions Judge-I, after considering the facts, found that the applicant failed to make out a case for the registration of an FIR, implying that the criminal element, if any, was either not sufficiently established or was ancillary to the civil dispute. The principle that criminal proceedings should not be used as a tool to enforce civil claims is well-established. If the crux of the matter pertains to a landlord-tenant relationship and the division of agricultural produce, the appropriate forum for redressal would be the Tenancy Tribunal or a civil court. The criminal justice system is not designed to resolve such disputes, and allowing its machinery to be invoked for this purpose would amount to an abuse of the process of law. The applicant’s remedy lies in pursuing his claim for savings and wheat before the appropriate forum. If, in the course of such proceedings, any independent and verifiable cognizable offense is clearly established that is not merely an offshoot of the civil dispute, then the applicant may seek redressal through the criminal justice system as per law. However, based on the material placed before this Court and the findings of the learned Additional Session Judge-I, the

current application appears to be an attempt to address a civil grievance through criminal proceedings.

8. The preamble of the Sindh Tenancy Act, 1950 reflects the legislative intent to establish a legal framework governing the relationship between agricultural tenants and landlords in the Province of Sindh. It underscores the need to regulate their respective rights and obligations in connection with agricultural land to prevent exploitation, ensure fairness, and promote agrarian justice. By introducing this law, the legislature aimed to provide clarity, security of tenure, and legal recourse in tenancy matters, thereby contributing to the orderly and equitable management of agricultural resources in the province. Although certain provisions of the Act have been declared *ultra vires* to the Constitution of the Islamic Republic of Pakistan, 1973, in the case of *Ghulam Ali v. Province of Sindh through Senior Member, Board of Revenue and others (PLD 2020 Sindh 284)*, the Sindh Tenancy Act, 1950 as a whole remains a valid statute, and the remedies provided therein continue to be available. This Court has interpreted the provisions of the said Act, 1950 in a comprehensive manner and, while doing so, has observed as under:

"44. In view of above discussions and directions the petition stands disposed of. We, however, for easy compliance of all directives, reiterate the same, in brief, as:--

(1) After the separation of the judiciary from the executive, the Assistant Commissioner, the Additional Commissioner and the Commissioner/Collector, do not have jurisdiction to make judicial determination under sections 27, 29 and 30 of the Sindh Tenancy Act, 1950, and to that extent the said provisions are ultra vires Articles 175, 202 and 203 of the Constitution of Pakistan, 1973;

(2) Till such time necessary amendments are made to the Sindh Tenancy Act 1950, the proceedings pending under sections 27, 29 and 30 of the Sindh Tenancy Act, 1950 shall be transferred to the District Court concerned where the District Judge shall assign tenancy applications under section 27 to the Civil Court exercising territorial jurisdiction, and the appeals and revisions pending under sections 29 and 30 shall be decided by the concerned District Judge or Additional District Judge;

(3) The amendment of section 27 of the Act shall, however be made within a period of one month by legislature by any mode within their wisdom subject to satisfaction of true spirit of Article 175 of the Constitution. The jurisdiction, exercised by Civil Judge and JM, till such amendment shall also be kept in view by Legislature so as to keep rights and interests of parties protected.

(4) The orders passed by the Assistant Commissioner and the Additional Commissioner in the case of the Petitioner under sections 27 and 29 respectively of the Sindh Tenancy Act, 1950 are set-aside and the tenancy application of the Petitioner shall be decided afresh by the Civil Judge under section 27 of the Sindh Tenancy Act, 1950 preferably within a period of three months;

(5) Section 6 of the Sindh Tenancy (Amendment) Act, 2013, whereby section 24(c) of the Sindh Tenancy Act, 1950 was amended to omit the prohibition on 'beggar' /free labor, is ultra vires Articles 11, 15 and 23 of the Constitution of Pakistan and shall be treated to have never existed;

(6) The Chief Secretary, Sindh is directed to issue directions to Secretary, Revenue department, Deputy Commissioner(s) all over Sindh to ensure compliance of Rule 3(1) of the Sindh Tenancy Rules, 2002 and such report regarding maintenance of Form-VI shall be submitted to this Court. Such process must be completed within a period of four months;

(7) The Commissioner(s), while issuing directions for preparation of Form VI, shall also direct the 'Mukhtiarkar(s)' to make sure that Haris have an area for accommodation as well for cattle and vegetable cultivation for the personal use of Haris without any payment (Aero) as per the spirit of section 24(e) of the Sindh Tenancy Act, 1950;

(8) The Government shall make necessary amendments in Sindh Tenancy Act, 1950 so as to bring it in line with the Constitution of Islamic Republic of Pakistan, 1973 as well peasant rights, detailed in referred United Nations Declaration while keeping in view the aspects, discussed in para-26 supra which are:-

"Such law should not only describe rights and obligations of peasant in respect of lands but should also include such mechanism whereby:

- i) eliminating the discriminative behavior with or towards Hari/ peasant;*
- ii) assuring not mere guarantee of fundamental rights but enjoyment thereof;*
- iii) assuring restrain on sudden eviction as well illegal eviction;*
- iv) assuring compensation against illegal and sudden eviction;*
- v) assuring protection to education of children in case of sudden and illegal eviction;*
- vi) assuring easy access to judicial system as well law enforcing agencies;*
- vii) assuring easy access to healthcare facility;*
- viii) assuring compulsory education to children;*
- ix) assuring a sense of protection to their women and children;*
- x) ensure compulsory life insurance of the peasants and their family members during or at time of creation of any such relationship so as to cover accidental death, harm or serious ailment of Hari, if receives while performing his any of the duties as HARI;*
- xi) ensure social security by the State for the laborers/peasants working in the agricultural sector by introducing fair and transparent mechanism for welfare and help of Hari in event of dire need like daughter's marriage, higher education of children etc; in that regard Province of Sindh should allocate basic funds, establish board/authority to receive requisite amount from landlord on yearly basis which would be adjustable at time of settlement of account;*

Since, the legislation is pure duty of the legislators therefore, things are left open but with hope rather belief that such legislation shall meet chalked out objective (s) and shall be made within least practicable period not exceeding four months".

(9) The Government shall, within six months, also make necessary legislation for AGRO LABOUR as discussed above, particularly in para-29 supra of judgment which is:

"makes it compulsory to bring on record all labourer by adopting a mechanism to register every single labourer, including agro labourer;

This shall make it easy not only to keep a watch over duties of an employer or landlord/zamindar which he owes towards his employee / hari but shall also help the Government in assuring providing him (employee / hari) the right to enjoy life which, needless to add, is not limited to mere act of breathing but includes:-

'reasonable labour money, access to education; health care facility; information, technology; legal help / aid and justice etc.'

Copy of this judgment shall be sent to the Advocate General Sindh, Chief Secretary Sindh and all learned District and Sessions Judges, through MIT, for information and compliance".

Therefore, this Court finds no legal infirmity or jurisdictional defect in the order passed by the learned Additional Sessions Judge-I, Mirpurkhas, so as to warrant interference under Section 561-A, Cr.P.C. The learned Ex-Officio Justice of Peace has rightly appreciated the nature of the dispute and has appropriately directed the applicant to avail the alternate remedy available under the relevant law.

9. For the foregoing reasons, this Criminal Miscellaneous Application is found to be without merit. The Impugned Order passed by the learned Additional Sessions Judge-I, Mirpurkhas, dated May 16, 2025, is hereby upheld. Consequently, the instant Criminal Miscellaneous Application is dismissed. The applicant is directed to approach the appropriate forum, such as the Tenancy Tribunal as per dictum laid down by this Court in Case of *Ghulam Ali* or Civil Court, for the redressal of his grievances pertaining to the crop shares and savings.

JUDGE

